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IN THE

Supreme Court of the United States

TERM COMMENCING OCTOBER, 1972

No. 72-1272

DOROTHY C. BELTRONE, *Petitioner,*

v.

GENERAL MOTORS CORPORATION and
PAUL BROTHERS, INC., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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March, 1973

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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JURISDICTION

Petitioner in this Court was the Plaintiff below. Pursuant to 28 U.S.C. 1254(1), the jurisdiction of this Court is invoked to review the Judgment of the U.S. Court of Appeals for the District of Columbia Circuit filed in this case on December 18, 1972. That Judgment affirmed an Order of the United States District Court for the District of Columbia, filed on October 20, 1971, dismissing petitioner's case "for failure of plaintiff to prosecute". The Court of Appeals Judgment stated no reasons for affirming the lower court's order, and gave no indication of where there could be found any

actions or failures to act on the part of the plaintiff which could at all make plaintiff guilty of a failure to prosecute.

QUESTIONS PRESENTED

Whether plaintiff could possibly be held guilty of a failure to prosecute her suit below by reason of any actions or failures to act on her part.

Whether the lower court or the Court of Appeals cited any actions or failures to act on the part of the plaintiff as the basis for finding that plaintiff was guilty of a failure to prosecute her suit below.

Whether plaintiff was found guilty of a failure to prosecute without having done anything that justified such a finding; and whether, therefore, the defendants have been improperly shielded from public scrutiny and public responsibility as to defectiveness and safety-characteristics of the automobiles they put out on the road and into the hands of innocent consumers.

STATEMENT OF THE CASE

On June 29, 1970 plaintiff filed a complaint for damages for serious personal injuries caused by the defective accelerator-throttle linkage in a new automobile manufactured by defendant General Motors and sold to plaintiff by defendant Paul Brothers. On April 29, 1971 there was a full formal Pretrial Conference before the Assistant Pretrial Examiner in the lower court; and a full report of this pretrial proceeding was filed in the trial court on April 29, 1971. The parties had no further dealing with the trial court until October 18, 1971, when they appeared at a calendar call hearing upon the call of the trial judge.

Up to this calendar call hearing of October 18, 1971, plaintiff had not asked for any postponements or extra time, and had not been late in submitting anything or unprepared for any step in the trial process. It is true there had been a dispute over whether defendant General Motors could force plaintiff's expert witness to be deposed contrary to Rule 26(b)(4) of the Federal Rules of Civil Procedure, which permits discovery from an expert witness only by interrogatory in the absence of a court order. But defendant General Motors, after threatening to take the matter to the trial judge, and darkly warning that all sorts of penalties would ensue therefrom, quietly dropped the matter. It is also true that, due to factors beyond her control, plaintiff was unable to meet the 30-day deadline for responses to General Motors' interrogatories to one of her two expert witnesses on automotive engineering. But defendant General Motors, which was aware of the circumstances preventing the responses to the interrogatories, never sought to avail itself of the specific remedy provided in Rule 37(a)(2) of the Federal Rules of Civil Procedure, which states: "If . . . a party fails to answer an interrogatory . . . the discovering party may move for an order compelling an answer. . . ." In any event, plaintiff was quite prepared to go to trial with her other expert, who was Ralf Hotchkiss, chief engineering expert of the Center for Auto Safety, now also directing the Center for Concerned Engineering, and co-author with Ralph Nader and Lowell Dodge (Director of the Center for Auto Safety) of the best-selling book *What to Do with Your Bad Car—An Action Manual for Lemon Owners.* Mr. Hotchkiss, after consulting within the Ralph Nader organization, and after examining the technical details of plaintiff's case,

had made himself available to testify as an expert witness for plaintiff without fee and as a public service.

At the calendar call hearing on October 18, 1971, plaintiff was quite ready to go to trial, if a trial date were set as a result of that "ready call". The trial judge, however, did not undertake in any way to ascertain how ready the parties were for setting of a trial date. Instead, right off the bat, he entertained an oral motion by defendant General Motors that plaintiff's action be dismissed. After asking plaintiff's counsel what he had to say about this motion, and hearing briefly from the counsel for the other defendant, the trial judge dismissed plaintiff's suit for lack of prosecution. He orally stated three reasons for dismissing for lack of prosecution. The first was expressed as follows:

> Well, we sent this to pretrial as long ago as last April on the assumption that discovery was completed, or soon would be completed. We are no further along now in October than we were in April.

The trial judge in no way indicates here that plaintiff was guilty of causing any delay. In fact, an examination of the record would readily show that it was General Motors which was guilty of causing unwarranted delay in the discovery process, by such deceptions as trying to depose plaintiff's expert witness when the rules allowed only interrogatories. The second reason for dismissing plaintiff's case was expressed by the trial judge as follows:

> At most, this accident happened in 1967, the first of July and the suit was filed one day before the expiration of the statute of limitations.

In response to this, counsel for plaintiff said: "Your Honor, may I suggest that that is not relevant to the question of whether it should be . . . (sic)". And the trial judge interrupted to say: "It is not relevant, but it indicates a general interest in pursuit of the litigation which, I think, has been lacking almost from the start." Of course, there is nothing here which has anything to do with failure to prosecute. Failure to prosecute has to do with action or inaction after a suit is filed. All the delay before a suit is filed, provided it is filed before the statutory limitation has expired, cannot rightly cause dismissal of the suit. The third reason for dismissing plaintiff's suit was expressed by the trial judge as follows:

> Prior to that time [the Pretrial Conference of April 29, 1971], we dismissed the case for want of prosecution, or we were about to when we gave Mrs. Beltrone an opportunity to get another lawyer and Mr. Evans withdrew.

The reference here is to the hearing on January 15, 1971 when the trial court granted the motion of plaintiff's original counsel to withdraw from the case. This counsel's withdrawal was entirely for his own purposes and not in any way called for or caused by plaintiff. This incident could not possibly involve any failure to prosecute on the part of the plaintiff.

REASONS FOR GRANTING THE WRIT

The facts of this case do not show that plaintiff was in any way guilty of a failure to prosecute her suit in the trial court. Nevertheless the trial judge dismissed her suit, citing no actions or failures to act

on plaintiff's part which involved any failure to prosecute, but citing, instead, reasons which, in each and every one of them, had nothing to do with failure to prosecute. The Court of Appeals affirmed the trial judge's dismissal by a brief and unrevealing Judgment which said not a word about where and how the plaintiff could be found guilty of failure to prosecute.

Two factors of great social importance militate in favor of the grant of a writ of certiorari by this Court in this case:

(1) A grave injustice has been done, shielding a great powerful corporation from "a little old woman", the plaintiff in this case. This injustice should be remedied by seeing that plaintiff is given her day in court. This is all that plaintiff, with all her heart, pleads for. From society's point of view, the fabric of democracy is rent a little bit, and we are all diminished a little bit, if a judicial result such as this is allowed to stand, if plaintiff is thrown out of court for no rational reason and just to get rid of her case.

(2) Plaintiff's case involves important questions of defects in automobiles put out by General Motors, posing great dangers to the public when such defective automobiles are unloosed upon roads and highways. Plaintiff's case also involves questions of General Motors pushing possible automobile defects out of sight and out of mind, until someone—a Ralph Nader or a Dorothy C. Beltrone—forces General Motors to face up to the possible defects in its automobiles. To permit plaintiff's case to be disposed of by an unmerited dismissal for failure to prosecute encourages General Motors in its gravely anti-social irresponsi-

bility towards automobile defects that can ruin lives and endanger many people.

Respectfully submitted,

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March, 1973

Filed Dec. 18, 1972

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-1096

(No Opinion)
September Term, 1972

Civil Action 1943-70

DOROTHY C. BELTRONE, *Appellant*
v.
GENERAL MOTORS CORPORATION, ET AL

Appeal from the United States District Court for the District of Columbia.

Before: McGowan, MacKinnon and Robb, Circuit Judges.

Judgment

THIS CAUSE came on for consideration on the record on appeal from the United States District Court for the District of Columbia, and briefs were filed herein by the parties. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c).

ON CONSIDERATION OF THE FOREGOING, It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam
For the Court

/s/ HUGH E. KLINE
Hugh E. Kline
Clerk